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**Foodland Super Market, Ltd. and International
Longshore & Warehouse Union, Local 142.**
Case 20–CA–209925

February 21, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by International Longshore & Warehouse Union, Local 142 (the Union) on November 15, 2017, the General Counsel issued a complaint on February 27, 2018, against Foodland Super Market, Ltd. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer.

On April 3, 2018, the General Counsel filed a Motion for Default Judgment with the Board. On April 6, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by March 13, (2018),¹ the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 15, 2018, notified the Respondent that unless an answer was received by March 23, 2018, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

¹ The complaint, which issued February 27, 2018, listed the answer date as March 13, 2017. The Respondent did not contact the Region for clarification. After the Respondent missed the initial answer date, the Region's subsequent letter gave an answer date of March 23, 2018. We find the error in the complaint inadvertent and not fatal to the motion for default judgment.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business located in Kihei, Hawaii, and has been engaged in the retail sale of grocery and related products.

In conducting its operations during the preceding twelve months, the Respondent had an annual gross volume of sales in excess of \$500,000 and, during the same period, purchased and received goods and supplies in excess of \$5000 directly from suppliers located outside the State of Hawaii.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Monrae Bailey
Robert Cadle

Director of Human Resources
Store Manager

The following employees of the Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees including regular part-time and casual employees of Respondent on Oahu, Maui, Kauai and Hawaii, exclusive of office clerical employees, watchmen and/or guards, professionals, engineers, all other job classifications covered by UFCW, and supervisors as defined by the National Labor Relations Act.

Since at least 1959, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 1, 2016, to October 31, 2019.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

On October 3, 2017, the Union filed a grievance with the Respondent regarding the suspension of a unit employee. That same date, in connection with the grievance, the Union requested in writing that the Respondent furnish the Union with the following information:

- (1) Disciplinary policies, rules, and regulations of the employer from the date the disciplined employee was hired to the present, including all amendments thereto;
- (2) Any policies, procedures, and forms of the Employer's progressive or corrective discipline system;
- (3) Forewarning given to the disciplined employee (in writing or orally) of the possible disciplinary consequences (including penalties) of the employee's conduct (for which discipline was later imposed);
- (4) The specific rule, order, or policy the disciplined employee allegedly disobeyed or violated and the employer's interest in enforcement of the rule, order, or policy;
- (5) Investigative notes, reports, statements, interviews, conferences, memos, incident reports, complaints, photos, diagrams, tape recordings, charts, confessions, admissions, and items retrieved as part of the employer's effort to discover whether the employee violated the rule, order or policy;
- (6) Names, addresses, and positions of all witnesses to the relevant incidents or events pertaining to the alleged misconduct or violations of rules, orders, or policy by the disciplined employee;
- (7) Names, addresses, and positions of all management personnel who made recommendations for or against disciplinary action or penalties in connection with the alleged misconduct by the disciplined employee;
- (8) Letters, memos, or records of the person who made the final decision to discipline which would indicate the precise reasons, grounds and basis for the decision;
- (9) Prior disciplinary actions of all other employees of the employer (whether in the bargaining unit or not) for violations of the same rule, order, or policy;
- (10) Prior incidents or occurrences of a similar nature committed by other employees of the employer for which no disciplinary penalties were imposed or for which other disciplinary penalties were enforced;
- (11) Complaints, incident reports, or other alleged violations of the same rule, order, or policy against other employees of the employer (whether in the bargaining unit or not), or for similar occurrences or incidents;

(12) Prior disciplinary actions of the employer in which the same disciplinary penalty was imposed for any reason or cause;

(13) Job application of the disciplined employee;

(14) Position or job descriptions of all positions in which the disciplined employee served;

(15) Job performance evaluations of the disciplined employee from the date of hire to the present;

(16) All favorable assessments or appraisals of the disciplined employees from customers or other persons, including letters of commendations, merit, or complements for work well done;

(17) All prior disciplinary actions against the disciplined employee including oral counseling or reprimands;

(18) Any other relevant and material information, including but not limited to the following:

- i. Copies of all statements from all witnesses for the incident;
 - ii. Copies of video showing the alleged incident;
 - ii. Copies of all Twitter, Facebook, You Tube or social media sent to the company regarding the alleged incident;
 - iv. Copies of all disciplines and the outcome for the grievant
- (19) The names, positions, and addresses of all persons who have custody or possession of the documents, records, and information requested.

The Union renewed the request in writing on October 10, 2017.

On October 30, 2017, the Union filed a grievance with the Respondent regarding the termination of the employee, referenced above, who was previously suspended. By email that same date, the Union renewed its request for the information it previously requested, and additionally requested that the Respondent furnish the Union with the following information:

- (1) Copies of the Employer's written policy that was violated which lead to the grievant's termination;
- (2) Copies of the Employer's Employee Handbook;
- (3) Copy of the grievant's personnel file.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

Since October 3, 2017, the Respondent has failed and refused to furnish the Union with the requested information, as described above.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on October 3, 2017, and October 30, 2017.

ORDER

The National Labor Relations Board orders that the Respondent, Foodland Super Market, Ltd., Honolulu, Hawaii, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Refusing to bargain collectively with International Longshore & Warehouse Union, Local 142 by failing and refusing to furnish it with requested information that is necessary and relevant to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information it requested on October 3, 2017, and October 30, 2017.

(b) Within 14 days after service by the Region, post at its facility in Kihei, Hawaii copies of the attached notice

marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 3, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 21, 2019

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with International Longshore & Warehouse Union, Local 142 by failing and refusing to furnish it with requested information that is necessary and relevant to the performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information it requested on October 3, 2017, and October 30, 2017.

FOODLAND SUPER MARKET, LTD

The Board's decision can be found at www.nlr.gov/case/20-CA-209925 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

